Docket No. 47524/P069D2/10015700

#24
SMC
3/2/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Michael J. Polcyn

Confirmation No.: 7216

Application No.: 09/574,317

Art Unit: 2642

Filed: May 19, 2000

Examiner: B. Q. Bui

For: ONE NUMBER LAN BASED CALENDAR

APPELLANT'S REPLY TO EXAMINER'S ANSWER (37 CFR 1.193(b))

RECEIVED

FEB 2 3 2004

Technology Center 2600

M/S Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450 .

This Reply Brief is presented in response to the Examiner's Answer mailed December 18, 2003. This Reply Brief is also in furtherance of the Notice of Appeal, dated June 28, 2002, and Appellant's Supplemental Appeal Brief and Request for Reinstatement of Appeal, dated August 29, 2003. This Reply Brief is transmitted in triplicate and accompanied by a Request for Oral Hearing.

Appellant respectfully requests withdrawal of the final rejection and allowance of the above-captioned application. Should the Appellee not find the comments contained herein persuasive, acknowledgment of receipt and entry of this Reply Brief is requested.

I.   INTRODUCTION

Below Appellant addresses aspects of the Appellee's responses set forth in the Examiner's Answer dated December 18, 2003. Appellant hereby reiterates the arguments presented in Appellant's Supplemental Appeal Brief dated August 29, 2003 by reference thereto. Although many of the Supplemental Appeal Brief arguments are restated or

rephrased below, in the interest of brevity, the arguments from the Supplemental Appeal Brief are not restated, whole-cloth, herein. Appellant submits the further arguments below to address the specific "Response[s] to Arguments" advanced by the Examiner's Answer. The Appellee's responses are addressed herein in the order in which they generally appear in the Examiner's Answer.

II.   ISSUES

Claims 1-5, 8-12, 15 and 17-19 stand rejected under 35 U.S.C. 102(b) as being anticipated by Arbel et. al, U.S. Pat. No. 5,276,731 (hereinafter *Arbel*). Appellant's arguments addressing the prior rejection of claims 6-7, 13-14 and 20 under 35 U.S.C. 102(b) are now moot as the Examiner has withdrawn the rejection of dependent claims 6-7, 13-14 and 20. Attempts to move the case to allowance during telephone interviews, failed. As *Arbel* fails to teach all limitations of the remaining claims under 35 U.S.C. §102, which is discussed in greater detail below, Appellant felt it inadvisable to amend independent claims 1, 8 and 15 to include limitations from the claims indicated as allowable by Appellee.

III.   Rejections Under 35 U.S.C. §102(b) over *Arbel*

On page 8, the Examiner's answer states: "Appellant's claims recite very broad terms such as "calendaring information", "general purpose processor," and "file ... operable on a personal computer". These broad limitations read on Arbel et al." Appellant respectfully disagrees.

As the Board is well aware, to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. §2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. §102 with respect to a claim, "[t]he elements must be arranged as required by the claim," see M.P.E.P. §2131, citing *In re Bond*, 15 US.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. §102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim," see M.P.E.P. §2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Appellant respectfully asserts that the rejections of the various claims do not satisfy these requirements.

A.   The Claims of Groups I (claim 1), II (claim 8) and III (claim 15)

In section (11) of the Examiner's Answer, despite Appellant's indication that the claims do not stand or fall together and Appellee's acknowledgment of this indication, Appellee addresses independent claims 1, 8 and 15 together. In the interest of brevity and clarity Appellant will reply to Appellee's responses in the same manner. However Appellant reiterates that the claims of each group do not stand or fall together.

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach "calendaring information" by stating:

> it is well-known that a calendar includes year, month, date or day. Any specific year, month, date or day allocated for a desired event for example for a specific time interval such as from 08:00 AM to 04:00 PM on Saturday and Sunday, in the event of absence from a shift, calls directed to Peter Parker should be transferred to a first or second target extension. This is considered as "calendaring information". Table shown at line 12 [sic] of column 10 in Arbel et al reads on the broadly recited "calendaring information".

However, Appellant respectfully maintains that the table at line 20 of column 10 of *Arbel* fails to show calendaring information, as it fails to show an event or the like, such as a meeting, appointment, etc. As noted at column 10, line 12 of *Arbel*: "Parker sets up a selective call re-routing entry in the database to transfer his incoming calls to the other foremen when it is not his shift. If the call is being transferred, but is not answered by the foreman, the call is transferred to a second target, the operator. Parker's selection criteria are based <u>only on time and day of the week</u>." (Emphasis added.) Thus, Appellant respectfully asserts that the "time and date conditions" of *Arbel* (column 13, line 4) do not meet the recited "calendaring information" of independent claim 1. *Webster's Encyclopedic Unabridged Dictionary* defines "calendar" as "3. A list or register, esp. one arranged chronologically, as of appointments, work to be done, or cases to be tried in a court", 1996, p. 296 (earlier submitted as Exhibit 1 in the "original" Appeal Brief and attached to the Supplemental Appeal Brief). Consistent with this definition, the present specification teaches that a preferred embodiment of the invention uses a calendar stored on a personal computer or personal digital assistant showing specific events scheduled for a particular day by a user, see page 9, lines 24-26.

Additionally, as pointed out in Appellant's Brief, independent claim 8 also recites "storing calendaring information <u>including specific events scheduled</u> with respect to said called party" (emphasis added). The Examiner's Answer, at best, cursorily addresses this limitation in the quoted text above. Appellant respectfully reiterates that the "predetermined selection criteria" of the table of column 10, line 20, which only includes time and day of the week information, does not meet the "storing calendaring information including specific <u>events</u> scheduled with respect to said called party" (emphasis added) limitation of claim 8.

For at least the above cited reasons Appellant respectfully reiterates that the time and day of the week information of *Arbel*, cited by Appellee, does not meet the recited "calendaring information" "with respect to said called party" recited by claims 1, 8 and 15.

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach "a general purpose processor-based system" or "personal computer" by stating:

> Appellant further argues (page 8, Brief) that the database where the calendar information is stored in by Arbel et al has no multiple functions as the claimed "general purpose processor-based system". Examiner respectfully disagrees because nether [sic] Appellant's claims nor specification gives examples of "other functions" performed by the general purpose processor-based system. In Arbel et al, the database is used to perform many embodiments, see at least the tables in Arbel et al., and therefore, it is a "general purpose".

Appellant respectfully contends that the tables of *Arbel* are not a disclosure of the database being "used to perform many embodiments" and that *Arbel* fails to disclose use of a general purpose processor-based system. Conversely, throughout the present specification reference is made to a PC based electronic calendar application operating on a general purpose processor based system. For example, at line 25 of page 8, the present specification provides: "the present invention may be embodied within a general purpose processor-based system." Additionally, in the paragraph beginning on line 10 of page 18 the present specification provides: "It should be noted that while a PC based application may be specifically adapted to handle call routing or other communication system functionality, the preferred embodiment of the present invention utilizes a general purpose PC based application, i.e., one not specifically adapted for communication system functions." Conversely, *Arbel* only discloses a controller 370 as part of system 140. System 140's sole

disclosed function is to interact with IVDT 130 (column 6, line 33). Although it is indicated that controller 370 "May be a microprocessor such as an IBM PS/2 personal computer" (column 7, line 38), there is no suggestion that system 140 or controller 370 of *Arbel* is configured for anything other than special purpose use to control IVDT 130. For at least these reasons Appellant contends that the "general purpose processor-base system" or "personal computer" recited by claims 1, 8 and 15 is not taught by *Arbel*.

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach "providing select portions of said calendaring information to an automatic call routing system" and the like by stating:

> Appellant further argues (page 8, Brief) that "Arbel et al fail to disclose providing selected portions of the calendaring information to an automatic call routing system". Examiner respectfully disagrees because Arbel et al teach a database such as database 360 for providing selected portions of the calendaring information such as an appropriate telephone number for a specific time and day. For example, from 04:00 PM to 12:00 AM on Saturday and Sunday as shown in column 10, line 25, a specific selected phone number is provided to the IVDT for causing the IVDT to automatically redirect the call in accordance with the selected portions of the calendaring information configured by the user associated with the IVDT (see column 10, lines 11-27 and column 13, lines 4-13).

Appellant respectfully points out that <u>all</u> of the time and day of the week information contained in the table, from line 20 to line 28 of column 10, of *Arbel* is contained in and used by the call routing system. *Arbel* fails to disclose <u>select portions</u> of calendaring information <u>from a calendaring program</u> maintained on a general purpose processor based device provided to a separate call routing system , particularly wherein a call routing scheme of the call routing system is modified to route calls as a function of the select portions of calendaring information. For at least these reasons Appellant contends that the "providing select portions of said calendaring information to an automatic call routing system" and the like recited by claims 1, 8 and 15 are not taught by *Arbel*.

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach "a call routing scheme of said call routing system is modified to route calls as a function of said select portions of said calendaring information," or to "modify operation of said call routing system to route calls as a function of said portions of said calendaring information," by stating:

Appellant further argues (page 8, Brief) that Arbel et al fail to disclose "a call routing scheme of said call routing system is modified to route calls as a function of said select portions of said calendaring information". Examiner respectfully disagrees because Arbel et al teach that the IVDT 130 redirecting the incoming call in accordance with calendar information configured by the user associated with the VDT 130) (col. 10, lns 11-27 and col. 12, lns 7-19).

Again Appellant respectfully reiterates its contention that the call routing discussed in columns 10 and 12 of *Arbel* is not the function of select portions of calendaring information, but rather as a result of directly entered selection criteria, such as shown in the table at line 20 of column 10, stored in a database. *Arbel* uses the "predetermined selection criteria" to route a call, does not use select portions of a user's calendar provided from calendaring information stored on a general purpose processor-based system. For at least these reasons Appellant contends that the "call routing scheme... modified to route calls as a function of said select portions of said calendaring information," or modifying "operation of said call routing system to route calls as a function of said portions of said calendaring information," recited by claims 1, 8 or 15 is not taught by *Arbel*.

Accordingly, it is respectfully asserted that the disclosure of *Arbel* does not meet the claim language and does not show the identical invention in as complete of detail as recited in independent claim 1, 8 or 15 as required for a proper rejection under 35 U.S.C. §102. Furthermore, whereas each of the dependent claims inherits all limitations of respective independent claim 1, 8 or 15, the dependent claims set forth features and limitations not recited by *Arbel*. Thus, Appellant respectfully asserts that at least for the above-advanced reasons claims 1 through 15 and 17 through 20 are patentable over the 35 U.S.C. §102 rejection of record.

B.   The Claims of Groups III (claim 15), IV (claim 2) and V (claim 9)

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach the "data file associated with an electronic calendar program operable on a personal computer" of dependent claims 2 and 9, and independent claim 15, by stating:

> As for the claimed "data file associated with an electronic calendar program operable on a personal computer" (claims 2, 9 and 15), at best, this reads on any data file that is "operable on a personal computer". The claimed "data file" being "associated with" an electronic calendar has no clear or defined meaning. Any data file (time, day,

Microsoft outlook, etc.) may be used by Arbel and a personal computer. Arbel and PC's, inherently, process a "data file" "associated" with "calendaring information".

As noted in the Supplemental Appeal Brief, *Arbel* is silent as to a "data file" associated with an electronic "calendar program" or the like. Appellant respectfully contends that "a data file associated with an electronic calendar program" does not read on "any data file that is operable on a personal computer." A data file associated with an electronic calendar program is of a specific format typically adapted for use by a particular calendaring program. For example a data file usable by Microsoft Outlook™ would not necessarily be readable in its native format by another calendar program, such as Lotus Organizer™, or by a call processing system. Further, Appellant respectfully contends that *Arbel* and a PC could not use "[a]ny data file," but rather that the call handling system of *Arbel* would require data files in a particular format. Finally, assuming *arguendo* "Arbel and PC's, inherently, process a 'data file' 'associated' with 'calendaring information,'" *Arbel* fails to disclose "a data file associated with a electronic calendar program <u>operable on a personal computer</u>."

Further, the Examiner's Answer seems to rely on inherency as part of its anticipation rejection. As the Board is well aware, a reference may not be anticipating under the principle of inherency on the basis of possibilities or probabilities, as anticipation by inherency requires that persons skilled in the art would recognize that the missing material is "necessarily present" in the reference, see *In re Robertson*, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999). The Examiner's Answer fails to sufficiently point out why persons skilled in the art would recognize that the allegedly inherent elements are "necessarily present" in *Arbel*. Also, in order to properly establish a rejection based on inherency, "the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the applied prior art," M.P.E.P. § 2112, citing *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis original). Appellant respectfully contends that a "data file associated with an electronic calendar program operable on a personal computer" does not necessarily flow from the teachings of *Arbel*, as *Arbel* fails to disclose use of an <u>electronic calendar program operable on a personal computer</u>, much less a data file associated therewith.

Therefore, Appellant respectfully asserts that at least for the above-advanced reasons claims 2, 9 and 15 are patentable over the 35 U.S.C. §102 rejections of record.

C.   The Claims of Group VI (claim 3), Group VII (claim 10) and Group VIII (claim 17)

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach providing the select portions of the calendaring information to the call routing system automatically, as recited by dependent claims 3, 10 and 17, by stating:

> Similar to the claimed limitation of "providing the selected portions of the calendaring information to the call routing system automatically" (claims 3, 10 and 17), Arbel et al disclose the database 360 for automatically providing a selected portions of the calendaring information such as an appropriate telephone number for a specific time and day. For example from 04:00 PM to 12:00 AM on Saturday and Sunday as shown in column 10, line 25, telephone number X5203 is provided to the IVDT for causing the IVDT to automatically redirect the call to that number (see column 10, lines 11-27 and column 13, lines 4-13).

Appellant wishes to reiterate its contention that *Arbel* does not teach the automatic provision of <u>calendaring information</u> to a call routing system as recited in claims 3, 10 and 17, particularly select portions of calendaring information stored on a general purpose processor-based system. The "predetermined selection criteria" of *Arbel*, such as the appropriate telephone number for a particular time and day of the week, are retrieved in response to an incoming call, based on the caller's number and not provided automatically from select portions of calendaring information stored on a general purpose processor-based system for modifying a call routing scheme of the call routing system. For at least these reasons Appellant reiterates its contention that the limitations recited by claims 3, 10 and 17 for providing the select portions of the calendaring information to the call routing system <u>automatically</u> are not taught by *Arbel*.

D.   The Claims of Group IX (claim 4), Group X (claim 11) and Group XI (claim 18)

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach initiation of automatic provision of <u>calendaring information</u> to a call routing system upon modification of the calendaring information stored on the general purpose processor-based system, as recited by dependent claims 4, 11 and 18, by stating:

> As to claims 4, 11 and 18, Appellant argues that Arbel et al fail to teach the feature of "automatic operation upon modification of calendaring information". Examiner respectfully disagrees because as shown in column 10, lines 11-27, Arbel et al teach that Peter Parker is enabled to <u>set</u> up selective call re-routing entry (e.g., specific time,

day and appropriate telephone numbers) in the database. Inherently Peter Parker can Set it up again (i.e., update or re-configure the re-routing entry).

Appellant respectfully contents that the cited set-up by Peter Parker, and re-set-up (i.e., update or re-configure the re-routing entry), are not automatic operation and is not initiated upon modification of calendaring information stored on a general purpose processor-based system. Rather, this set-up or re-set-up is manual entry and/or modification of call routing information in the call routing system. Accordingly, it is respectfully asserted that the disclosure of *Arbel* does not meet the claim language and does not show the identical invention in as complete of detail as recited in claims 4, 11 and 18 as required for a proper rejection under 35 U.S.C. §102. Thus, Appellant respectfully asserts that at least for the above-advanced reasons claims 4, 11 and 18 are patentable over the 35 U.S.C. §102 rejection of record.

E.   The Claims of Group XII (claim 5), Group XIII (claim 12) and Group XIV (claim 19)

Appellee responds to Appellant's Supplemental Appeal Brief arguments that *Arbel* does not teach initiation of automatic provision of <u>calendaring information</u> to a call routing system at preselected time intervals, as recited by dependent claims 4, 11 and 18, by stating:

> As to claims 5, 12 and 19, Appellant argues that Arbel et al fail to teach the feature of "automatic operation of said providing means is initiated at a pre-selected time interval". Examiner respectfully disagrees because as shown in column 10, lines 11-27, Arbel et al teach that in response to an incoming call, in a pre-selected time interval such as from 04:00 PM to 12:00 AM on Saturday and Sunday, a database 360 is initiated and automatically provides the appropriate telephone number(s) where the incoming call should be directed to in the event of Peter's absence (see column 10, lines 11-27 and column 13, lines 4-13).

Appellant respectfully contents that the cited response to an incoming call, during a particular time frame, which directs an incoming call to a specified number, is not automatic provision of select portions of said calendaring information stored on a general purpose processor-based system at a preselected time interval, but rather redirection of a call in accordance with "predetermined selection criteria" defined in a database that is part of a call switching system.

Accordingly, it is respectfully asserted that the disclosure of *Arbel* does not meet the claim language and does not show the identical invention in as complete of detail as recited in

claims 5, 12 and 19 as required for a proper rejection under 35 U.S.C. §102. Thus, Appellant respectfully asserts that at least for the above-advanced reasons claims 5, 12 and 19 are patentable over the 35 U.S.C. §102 rejection of record.

IV   Conclusion

For the reasons set forth in the Appeal Brief dated August 29, 2003, and as supplemented above, Appellant respectfully contends that each of claims 1 through 5, 8 through 12, 15 and 17 through 19 are patentable over the applied art. As shown above, there are great differences between the claims and the cited prior art. Moreover, a person of ordinary skill in the art considering the prior art would not find these differences obvious. Accordingly, Appellant respectfully traverses the current 35 U.S.C. §102 rejections of record, and respectfully requests that the Board indicate allowability of claims 1 through 15 and 17 through 19 so that the present application may pass to issue.

Appellant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 47524/P069D2/10015700 from which the undersigned is authorized to draw.

Dated: February 18, 2004   Respectfully submitted,

By_____
Jerry L. Mahurin
Registration No.: 34,661
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8386
(214) 855-8200 (Fax)
Attorney for Applicant